

AMENDED IN SENATE JULY 13, 1998

AMENDED IN SENATE JUNE 18, 1998

AMENDED IN ASSEMBLY APRIL 28, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2268

Introduced by Assembly Member Leach

February 19, 1998

An act to amend Sections 715, 719, 731, 734, and 737 of, and to add ~~Section 729.5~~ *Sections 729.5 and 735.1* to, the Harbors and Navigation Code, to amend Section 650 of the Unemployment Insurance Code, and to amend Section 9863 of the Vehicle Code, relating to boats.

LEGISLATIVE COUNSEL'S DIGEST

AB 2268, as amended, Leach. Yacht and ship brokers: boat dealers.

(1) Under the Yacht and Ship Brokers Act, the Department of Boating and Waterways licenses the activities of brokers and salespersons engaged in the buying and selling of yachts and ships, as specified.

This bill would provide that every license issued to a limited liability company entitles one member thereof on behalf of the limited liability company to engage in the business of yacht broker without the payment of any further fee. The bill would prescribe the powers and duties of a limited liability company in regard to a broker's license.

(2) Under existing law, the department may not deny, suspend, or revoke a license granted under the act without a hearing, except that the department may suspend a license without a hearing for failure of a broker to maintain a bond, as specified.

This bill would additionally authorize the department to suspend a license without a hearing for failure of a broker to make available specified records to the department, as provided. The bill would allow the broker to appeal the suspension to an administrative law judge.

The bill would also authorize the department in any order issued in a disciplinary proceeding under the act to request the administrative law judge to direct a licensee found to have committed a violation of the act to pay the reasonable cost of the investigation, prosecution, and enforcement of the case, as provided in the bill. The bill would prescribe related conditions for issuance of an order.

(3) Existing law provides for the payment of unemployment insurance and disability compensation to certain employees who become unemployed or disabled. For that purpose, existing law defines employee, but excludes certain persons from that definition.

This bill would also exclude licensed yacht brokers and salesmen from the definition of “employee” if certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 715 of the Harbors and
2 Navigation Code is amended to read:
3 715. Within one month after the closing of a
4 transaction in which title to a yacht is conveyed from a
5 seller to a purchaser through a licensed broker, the
6 licensee shall provide, or cause to be provided to the seller
7 and purchaser, a closing statement in writing of the
8 selling price thereof, including all charges and credits
9 which shall be itemized, and in the event an exchange of
10 yachts is involved, the information shall include a

1 description of the yachts and amount of added money
2 consideration, if any. The licensee shall affix his or her
3 signature to the closing statement to attest to the facts
4 provided in the closing statement. If the transaction is
5 closed through escrow and the escrowholder renders a
6 closing statement which reveals the information, that
7 shall be deemed compliance with this section on the part
8 of the licensed broker.

9 SEC. 2. Section 719 of the Harbors and Navigation
10 Code is amended to read:

11 719. (a) A person shall be deemed qualified to submit
12 an application for a broker's license if, as shown on the
13 department's records, the person has been employed,
14 within five years preceding his or her application, as a
15 licensed salesperson for at least one year, has been
16 licensed as a broker within five years preceding his or her
17 application, has owned and operated a marine business
18 selling new or used yachts for a minimum of three
19 continuous years immediately preceding application for
20 a broker's license, or has been employed as a broker or a
21 yacht salesperson in another state when that employment
22 was a primary occupation for a minimum of three
23 continuous years immediately preceding application for
24 a broker's license in California. Proof of employment as
25 a broker in another state or as a marine business selling
26 new or used yachts in California shall be in the form of all
27 of the following:

28 (1) State, if applicable, and federal income tax returns,
29 or a proof-of-earning statement made by the applicant
30 under penalty of perjury, for the three-year period
31 preceding application in California.

32 (2) If bonded, a statement issued by the applicant's
33 bonding company that no action has been taken against
34 the bond for fraud or gross misrepresentation for the
35 period for which the bond has been issued.

36 (3) A copy of all business permits, issued by any state,
37 county, or city agency, which, if applicable, includes the
38 fictitious business name ("dba" or "doing business as")
39 under which the applicant conducted a yacht or ship
40 brokerage business or a marine business selling new or

1 used yachts in California for the three-year period
2 preceding application for a California broker's license.

3 (4) If the applicant conducts a yacht or ship brokerage
4 business in another state that requires broker or
5 salesperson licensing, evidence of a current license in that
6 state.

7 (b) If the applicant is a partnership, then one of the
8 partners of the applicant shall have the foregoing
9 qualifications.

10 (c) If the applicant is a corporation, then the officer or
11 officers of the corporation to be designated for a license
12 as provided in this article shall have the foregoing
13 qualifications.

14 (d) If the applicant is an individual, the applicant shall
15 be at least 18 years of age.

16 (e) If the applicant is a limited liability company, the
17 member or members of the limited liability company
18 designated for a license as provided in this article shall
19 have the qualifications required by this section.

20 SEC. 3. Section 729.5 is added to the Harbors and
21 Navigation Code, to read:

22 729.5. (a) Every license issued to a limited liability
23 company entitles one member thereof on behalf of the
24 limited liability company to engage in the business of
25 yacht broker without the payment of any further fee.
26 That member shall be designated in the application of the
27 limited liability company for a license.

28 (b) When a broker's license is issued to a limited
29 liability company, if the limited liability company desires
30 any member or members other than the member
31 designated by it, as provided in subdivision (a), to act
32 under its license as a broker, the limited liability company
33 shall procure an additional broker's license for each
34 additional member. The appropriate original or renewal
35 fee shall be paid for each member, other than the
36 member designated pursuant to subdivision (a), in
37 addition to the fee paid by the limited liability company.
38 Each such member shall qualify as provided for in this
39 article for a broker's license.

1 (c) A member of a limited liability company licensed
2 to act as a broker on behalf of the limited liability
3 company who desires also to act as a broker or salesperson
4 under this article on his or her own behalf shall procure
5 a separate license in accordance with this article.

6 (d) The department may deny, suspend, or revoke the
7 broker's license of a limited liability company as to any
8 member acting under its license without revoking the
9 license of the limited liability company. Every limited
10 liability company making application for a license under
11 this article shall furnish the department with a resolution
12 of its members indicating the name of the member or
13 members who shall act for and on behalf of the limited
14 liability company.

15 (e) Every limited liability company licensed under
16 this article may, by resolution of its members, substitute
17 another member for the member named in the limited
18 liability license if the person to be substituted qualifies as
19 provided in this article for a broker's license and the
20 limited liability company pays the appropriate original,
21 renewal, or transfer fee as set forth in this article.

22 SEC. 4. Section 731 of the Harbors and Navigation
23 Code is amended to read:

24 731. (a) A cash deposit given instead of the bond
25 required by Section 730 shall be held by the department
26 during the life of the license and for a period of four years
27 after the expiration of the license.

28 (b) If an action is commenced on the cash deposit of
29 a licensed broker pursuant to subdivision (a), the
30 department may require the filing of an additional cash
31 deposit, and immediately, upon the recovery in any
32 action on the deposit, the broker described therein shall
33 file a new cash deposit, equal to the amount specified in
34 the action or recovery, but no greater than the amount
35 specified in subdivision (a) of Section 730, whichever is
36 less. Failure to file an additional cash deposit within 30
37 days after notification that an additional cash deposit is
38 required by reason of an action filed against the cash
39 deposit, or after the recovery on a cash deposit, shall
40 constitute a failure to comply with this article, in which

1 case the department may suspend the license of the
2 licensed broker whose cash deposit has been acted on, or
3 where a cash deposit recovery has been made.

4 SEC. 5. Section 734 of the Harbors and Navigation
5 Code is amended to read:

6 734. (a) The department shall not deny, suspend, or
7 revoke a license granted under this article without a
8 hearing, except the department may suspend a license
9 without a hearing for failure of a broker to maintain a
10 bond as specified in subdivision (d) of Section 730, or for
11 failure of a broker to make available to the department
12 ~~for inspection within 30 days of the department's request,~~
13 ~~any records required to be maintained by the broker~~
14 ~~under the license., for inspection, any records, as set forth~~
15 ~~in Section 735.1.~~

16 (b) The department may upon its own motion, and
17 shall upon the verified written complaint of any person
18 which sets forth facts which could be grounds for the
19 denial, suspension, or revocation of a license pursuant to
20 this article, investigate the actions of any broker or
21 salesman whether or not licensed.

22 (c) The suspension, expiration, or revocation by
23 operation of law of a license issued by the department, or
24 its surrender, whether voluntary or not, does not deprive
25 the department of its authority, during the period in
26 which the license may be renewed, reinstated, or
27 reissued, to institute or continue a disciplinary
28 proceeding against the licensee upon any ground
29 provided by law, to enter an order suspending or
30 revoking the license, or to take any action against the
31 licensee on any other ground provided by law.

32 (d) A broker whose license has been suspended
33 pursuant to subdivision (a) for failure to make records
34 available to the department for inspection, may request
35 ~~a hearing that an expedited hearing be held within 30~~
36 ~~days of the suspension~~ before an administrative law judge
37 to appeal the suspension. Upon a showing of good cause
38 to reinstate the license, the broker's license shall be
39 reinstated. If no good cause is found, the broker's license
40 may be revoked.

1 (e) (1) Except as otherwise provided by law, in any
2 order issued in resolution of a disciplinary proceeding
3 under this article, the department may request the
4 administrative law judge to direct a licensee found to
5 have committed a violation or violations of this article to
6 pay a sum not to exceed the reasonable costs of the
7 investigation, prosecution, and enforcement of the case.

8 For purposes of this paragraph, “reasonable costs” shall
9 include, but not be limited to, all of the following:

10 (A) Attorney, paralegal, and investigator fees and
11 costs, including salary, travel, and other expenses
12 attributable to hours expended on the case by employees
13 of the office of the Attorney General and the department.

14 (B) Witness fees, travel, and other expenses paid to or
15 in connection with witnesses to facilitate their attendance
16 and testimony at the disciplinary proceeding or to
17 facilitate their appearance at a deposition, by video or by
18 other means.

19 (C) Fees and costs attributable to expert review,
20 including, but not limited to, laboratory analysis, physical
21 examination, and psychological examination, whether by
22 an independent expert or a staff member of the
23 department.

24 (D) Administrative expenses attributable to case
25 preparation and presentation, including, but not limited
26 to, exhibit preparation and document copying, postage,
27 telephone calls, word processing, whether by an
28 independent contractor or a staff member of the
29 department, and costs for obtaining certified public
30 documents.

31 (2) In the case of a disciplined licensee that is a
32 corporation or a partnership, the order may be made
33 against the licensed corporate entity or licensed
34 partnership.

35 (3) A declaration under penalty of perjury of the
36 actual costs, or a good faith estimate of costs if the actual
37 costs are not available, signed by the director, and
38 containing sufficient information by which the
39 administrative law judge can determine the costs
40 incurred in connection with the matter and the

1 reasonableness of the costs, shall be prima facie evidence
2 of reasonable costs of investigation, prosecution, and
3 enforcement of the case.

4 (4) The administrative law judge shall make a
5 proposed finding of the amount of reasonable costs of
6 investigation and prosecution of the case when requested
7 pursuant to paragraph (1). The department may reduce
8 or eliminate the award of any costs by the administrative
9 law judge, and may request the administrative law judge
10 to reconsider his or her decision if the proposed decision
11 does not make a finding on costs as requested pursuant to
12 paragraph (1).

13 (5) Where an order for recovery of costs is made and
14 timely payment is not made as directed, the department
15 may enforce the order for repayment in any appropriate
16 court. This right of enforcement shall be in addition to any
17 other rights the department may have as to any licensee
18 to pay costs.

19 (6) In any action for recovery of costs, proof of the
20 department's decision shall be conclusive proof of the
21 validity of the order of payment and the terms for
22 payment.

23 (7) The department shall not renew or reinstate the
24 license of any licensee who does not pay all of the costs
25 ordered under this section.

26 (8) All costs recovered under this section shall be
27 considered a reimbursement for costs incurred and shall
28 be deposited in the Harbors and Watercraft Revolving
29 Fund.

30 (9) Nothing in this section shall preclude the
31 department from including the recovery of the costs of
32 investigation, prosecution, and enforcement of a case in
33 any stipulated settlement.

34 SEC. 6. *Section 735.1 is added to the Harbors and*
35 *Navigation Code, to read:*

36 *735.1. A licensed broker shall retain, for four years,*
37 *copies of all listings, deposit receipts, cancelled checks,*
38 *trust records, and other documents executed or obtained*
39 *by the broker in connection with a transaction for which*
40 *a broker's license is required. These records shall be made*

1 *available to the department for inspection upon request.*
2 *If the records have not been made available within 30*
3 *days of a request by the department, the department may*
4 *subpoena the requested records. If the records have not*
5 *been made available within 14 days from the requested*
6 *day of production on the subpoena, and the director*
7 *determines that the public may be at risk if the broker*
8 *continues to be licensed, the department may suspend*
9 *the broker's license pursuant to Section 734.*

10 SEC. 7. Section 737 of the Harbors and Navigation
11 Code is amended to read:

12 737. (a) The proceedings and hearings under this
13 article shall be conducted in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3
15 of Title 2 of the Government Code, including the right of
16 judicial review as provided for in Section 11523 of the
17 Government Code.

18 (b) In addition to any other disciplinary action and in
19 lieu of a separate action in civil court, the department, as
20 part of a disciplinary hearing conducted by an
21 administrative law judge, may impose a civil penalty as
22 provided in Section 739.

23 ~~SEC. 7.~~

24 SEC. 8. Section 650 of the Unemployment Insurance
25 Code is amended to read:

26 650. "Employment" does not include services
27 performed as a real estate, mineral, oil and gas, or
28 cemetery broker or as a real estate, cemetery or direct
29 sales salesperson, or a yacht broker or salesman, by an
30 individual if all of the following conditions are met:

31 (a) The individual is licensed under the provisions of
32 Chapter 19 (commencing with Section 9600) of Division
33 3 of, or Part 1 (commencing with Section 10000) of
34 Division 4 of, the Business and Professions Code, Article
35 2 (commencing with Section 700) of Chapter 5 of
36 Division 3 of the Harbors and Navigation Code, or is
37 engaged in the trade or business of primarily inperson
38 demonstration and sales presentation of consumer
39 products, including services or other intangibles, in the
40 home or sales to any buyer on a buy-sell basis, a

1 deposit-commission basis, or any similar basis, for resale
2 by the buyer or any other person in the home or
3 otherwise than from a retail or wholesale establishment.

4 (b) Substantially all of the remuneration (whether or
5 not paid in cash) for the services performed by that
6 individual is directly related to sales or other output
7 (including the performance of services) rather than to
8 the number of hours worked by that individual.

9 (c) The services performed by the individual are
10 performed pursuant to a written contract between that
11 individual and the person for whom the services are
12 performed and the contract provides that the individual
13 will not be treated as an employee with respect to those
14 services for state tax purposes.

15 ~~SEC. 8.~~

16 *SEC. 9.* Section 9863 of the Vehicle Code is amended
17 to read:

18 9863. All fees received, except moneys collected
19 under Section 9875, pursuant to this chapter shall be
20 deposited in the Harbors and Watercraft Revolving Fund
21 and, notwithstanding Section 13340 of the Government
22 Code, are continuously appropriated, without regard to
23 fiscal years, for the administration of this chapter by the
24 department. Any funds in the Harbors and Watercraft
25 Revolving Fund derived pursuant to this chapter in
26 excess of the amount determined by the Director of
27 Finance, from time to time, to be necessary for
28 expenditure for the administration of this chapter,
29 notwithstanding Section 13340 of the Government Code,
30 are continuously appropriated to the Department of
31 Boating and Waterways, without regard to fiscal years, for
32 expenditure in accordance with Section 663.7 of the
33 Harbors and Navigation Code.